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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,751	02/11/2002	Robert J. Smith	2103-020242	5593

28289 7590 05/21/2003

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EXAMINER
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NGO, LIEN M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/683,751

Applicant(s)

SMITH, ROBERT J.

Examiner

LIEN TM NGO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. Applicant's election with traverse of group I, claims 1-9 and 18-20, in Paper No. 4 is acknowledged. The traversal is on the ground(s) that the examination of the entire applicant could be made without burden. This is not found persuasive because the present application comprises three patentability distinct inventions with proper reasons given in the Restriction Requirement as paper No. 4, and have acquired a separate status in the art as shown by their different classification.. Moreover, applicant does not traverse on the ground that the groups are not patentably distinct and submit evidence or identify such evidence now of record showing the Groups to be obvious variants or clearly admit on the record that this is the case.

The requirement is still deemed proper and is therefore made FINAL.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-9 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, line 10 and claim 6, lines 10-11, "the circumference" lack antecedent basis.

In claim 3, "the same direction" lack antecedent basis.

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Claims 5 and 20 are indefinite, because a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. In the present instance, claims 5 and 20 recites the broad recitation "a length-to widths ratio of at least one and one-half" as in the independent claim 19, and the claim also recites "a length -to-width ratio at least two" which is the narrower statement of the range/limitation.

*Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-9 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelly (5,727,705).

In regard to claims 1 and 6, Kelly discloses, in figs. 1-3, a closure comprising a top , an annular side wall 2 having internal thread, a tamper-evident portion having leaders 4 extending across a score line to a lower band 3, the lower band including a substantially continuous internal projection 5 having an angled portion (see fig. 2).

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In regard to claims 2, 3 and 7, the angled portion 6 extends about 90 degrees of the circumference (see fig. 2) and includes a rounded end (see fig. 3).

In regard to claim 4, 5, 8, 9, 19 and 20, the projection is substantially rectangular in cross-section and has a length-to-width ratio of more than one and one-half (see fig. 2). The angled portion 6 is angled away from the leaders 4.

In regard to claim 18, the process limitations are not considered for patentability in a product-by-process claim (see MPEP 2113).

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ma, Samon, Prades, Pohlenz, Imbery, Jr., Zumbuhl, Luch et al., Hayes, and Pfefferkorn et al. teach closures with tamper evident portions having angled protrusions.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Ngo whose telephone number is (703) 305-0294. The examiner can normally be reached Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Lee Young, can be reached at (703)308-2572. The Group FAX number is (703) 305-3579.

Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-1148.



Lien Ngo

May 15, 2003